

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

AARON RUBENSTEIN,

Plaintiff,

v.

BRUCE R. BERKOWITZ, and FAIRHOLME  
CAPITAL MANAGEMENT, LLC,

Defendants,

and

SEARS HOLDINGS CORP.,

Nominal Defendant.

17-cv-821 (JPO)

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that upon the Affidavit of Fernando M. Font, sworn to April 27, 2017, the exhibits thereto, the Complaint, the accompanying memorandum of law, and all of the prior proceedings had herein, Defendants Fairholme Capital Management, LLC and Bruce R. Berkowitz, by and through their attorneys, Seward & Kissel LLP, will move this Court before the Honorable J. Paul Oetken, at the United States District Court, Southern District of New York, 40 Foley Square, New York, NY 10007, at a time and date convenient for the Court, for an order pursuant to Fed. R. Civ. P. 12(b)(6) dismissing the Complaint for failure to state a claim upon which relief may be granted and granting such other and further relief as this Court deems just and proper.

SEWARD & KISSEL LLP

By: 

Mark J. Hyland

Noah S. Czarny (awaiting SDNY admission)

SEWARD & KISSEL LLP

One Battery Park Plaza

New York, New York 10004

Tel: (212) 574-1200

*Attorneys for Defendants Bruce R. Berkowitz  
and Fairholme Capital Management, LLC*